

BEFORE THE

## Federal Communications Commission

WASHINGTON, D.C.

In the Matter of )  
 )  
 Amendment of Section 73.202(b), ) MM Docket No. 98-34  
 Table of Allotments, ) RM-9233  
 FM Broadcast Stations )  
 (Buckhannon, West Virginia) )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYCOMMENTS AND COUNTERPROPOSAL

Hershey Broadcasting Company ("Hershey"), by its attorney, hereby submits its  
 Comments and Counterproposal in the above-referenced proceeding.

1. By Notice of Proposed Rule Making, DA-479, released March 13, 1998 (the  
 "NPRM"), the Chief of the Commission's Allocations Branch proposed the allotment of Channel  
 238A at Buckhannon, West Virginia in response to a petition filed by J&K Broadcasting, Inc.  
 ("J&K"). The NPRM observed that this allotment would provide Buckhannon with a third local  
 commercial FM transmission service.

2. In response to the NPRM,<sup>1/</sup> Hershey hereby proposes the allotment of Channel  
 238A to Burnsville, West Virginia rather than Buckhannon. Whereas Buckhannon has five  
 licensed aural local radio services (see attached Technical Statement), Burnsville has no local  
 aural service.

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<sup>1/</sup> This submission is timely filed on the Comment date set forth in the NPRM.

3. Generally, Section 307(b) of the Communications Act, as amended, requires that channel allotments be made to communities with geographically identifiable population groupings. Burnsville, West Virginia qualifies as a community for allotment purposes. See Revision of FM Assignment Policies and Procedures, Second Report and Order ("FM Assignments"), 90 FCC 2d 88, 101 (1982) (noting that if a community is incorporated or listed in the U.S. Census, it qualifies as an independent community for allotment purposes). Burnsville is both incorporated and listed in the U.S. Census.

4. Burnsville is an incorporated town of approximately 531 (1990 U.S. Census pop.), and Braxton County has a population of 12,998 (1990 U.S. Census). Burnsville is also close to Gilmer County which has a population of 8,334 (1990 U.S. Census). The town of Burnsville was established shortly after the close of the Civil War and was incorporated in 1902. Burnsville has a mayor and town council. Elections are held every two years. In addition, the town has a City Supervisor, a Chief of Police, a Fire Chief, a volunteer fire department, a volunteer ambulance service, a Public Utilities Board, a Park and Recreation Board and a Community Building Board. There is a post office and public library in Burnsville, and the town has its own elementary school. Local businesses include restaurants, a motel and an auto parts store. Burnsville is located along Interstate 79 which is a major north-south thoroughfare through West Virginia.

5. The Commission has long held that providing a community with its first local service is one of the top priorities of its FM allotment policy. FM Assignments, 90 FCC2d 88, 92. Burnsville has no local FM service despite the fact that it clearly qualifies as a community for allotment purposes, as detailed above. Buckhannon, on the other hand, has five local aural

services including two commercial FM voices. Thus, the allotment of Channel 238A to Burnsville would further the Commission's top FM allotment policy goal of providing a first local service. Furthermore, the allotment of Channel 238A to Burnsville is consistent with the Commission's rules regarding spacing among FM broadcast stations. (See attached Technical Statement).

In sum, Burnsville is a community which deserves a first local aural service. The allotment of Channel 238A to Burnsville will provide Burnsville with a first local aural service and will also provide Braxton and Gilmer counties with a local radio voice. Gilmer County presently has no local aural service. In contrast, Buckhannon is well served by commercial and noncommercial radio stations and does not need a fifth local service. The attached Technical Statement demonstrates that Channel 238A can be allotted to Burnsville in compliance with the FCC's separation requirements. Moreover, unlike the Buckhannon proposal, the Burnsville reference site is located outside the National Radio Quiet Zone defined in Section 73.1030(a)(1) of the Commission's rules. Hershey Broadcasting Company hereby states that it is its intention to apply for Channel 238A at Burnsville, West Virginia if the proposed allotment is made and to promptly build the station if its application is granted.

For the foregoing reasons, Hershey Broadcasting Company respectfully requests the Commission to deny the proposed allotment of Channel 238A to Buckhannon, West Virginia and to amend Section 73.202(b), Table of Allotment, FM Broadcast Stations to allot Channel 238A to Burnsville, West Virginia.

Respectfully submitted,

HERSHEY BROADCASTING COMPANY

FISHER WAYLAND COOPER  
LEADER AND ZARAGOZA, LLP  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20006-1851  
(202) 659-3494

BY: 

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Gregory L. Masters

Its Attorney

Dated: May 4, 1998

TECHNICAL STATEMENT  
IN SUPPORT OF COUNTERPROPOSAL  
MM DOCKET NO. 98-34  
PREPARED FOR  
HERSHEY BROADCASTING COMPANY

This Technical Statement was prepared on behalf of Hershey Broadcasting Company ("Hershey") in support of a counterproposal. The Commission has released a Notice of Proposed Rule Making that proposes the allotment of Channel 238A to Buckhannon, West Virginia (MM Docket No. 98-34, RM-9233). Hershey proposes that Channel 238A be allotted to Burnsville, West Virginia, its first local service, instead of Buckhannon, West Virginia which presently has five licensed aural local services.\*

A reference site was established for Channel 238A that is approximately 2 kilometers northeast of Burnsville. Figure 1 is a tabulation of the allocation study for Channel 238A at Burnsville. As indicated, using the proposed reference site, the Section 73.207 of the FCC Rules separation requirements are met with respect to all assignments and allotments, with the exception of the proposal for Buckhannon (RM-9233). Furthermore, as the reference site is located approximately two kilometers from the proposed principal community, it is obvious that

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\* The existing radio stations assigned to Buckhannon, West Virginia include WBTQ(FM), WBUC(AM), WBRB(FM), WVPW(FM) and WVWC(FM). WVPW(FM) is licensed as an educational station. WVWC(FM) is a Class D facility.

the hypothetical 70 dBu coverage contour will fully encompass the city limits of Burnsville as required by the FCC. Also, no major terrain obstructions exist between the proposed reference site and the principal community. The Burnsville reference site is located outside the National Radio Quiet Zone defined in Section 73.1030(a)(1) of the Commission's Rules.

A handwritten signature in black ink, appearing to read 'Charles A. Cooper', with a long horizontal line extending to the right.

Charles A. Cooper

du Treil, Lundin & Rackley, Inc.  
240 N. Washington Blvd., Suite 700  
Sarasota, FL 34236  
(941)366-2611

April 27, 1998

TECHNICAL STATEMENT  
IN SUPPORT OF COUNTERPROPOSAL  
MM DOCKET NO. 98-34  
PREPARED FOR  
HERSHEY BROADCASTING COMPANY

Channel 238A Reference Site Allocation Study

38° 52" 00" North Latitude  
80° 38' 30" West Longitude

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
WXIL LIC	Parkersburg WV	BMLH920715KC	236B 95.1	50. 152.0	39-14-47 81-28-19	300.8	83.33	69
WRLB LIC	Rainelle WV	BLH960314KA	237B1 95.3	13.0 DA 139.0	37-57-28 80-45-45	186.0 SS	101.45	96
PADD	Buckhannon WV	RM9233	238A 95.5		38-59-30 80-13-48	68.5	38.31	†
WZXI LIC	Buffalo Gap VA	BMLH970227KB	238A 95.5	6.0 94.0	38-10-55 79-13-34	121.3	144.98	115
WHOK LIC	Lancaster OH	BLH941223KB	238B 95.5	21. DA 232.0	39-40-32 82-40-34	297.8	197.21	178
WQHY LIC	Prestonsburg KY	BLH910521KB	238C 95.5	100. 305.0	37-41-45 82-45-24	235.5	226.13	226
ALC	Shadyside OH	Docket88-544	239B1 95.7		40-02-00 80-45-45	355.5	129.95	96
WTBZFM LIC	Grafton WV	BLH880405KQ	240A 95.9	3.00 91.0	39-21-16 80-01-27	44.3	76.07	31
WKWS LIC	Charleston WV	BLH930405KB	241B 96.1	45. 157.0	38-21-51 81-46-05	240.6	112.86	69

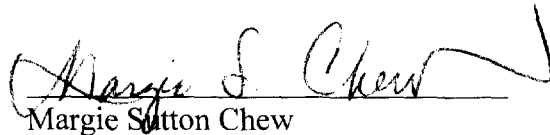
† Burnsville, West Virginia herein proposed instead of Buckhannon, West Virginia

**CERTIFICATE OF SERVICE**

I, Margie Sutton Chew, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., do hereby certify that true copies of the foregoing **“COMMENTS AND COUNTERPROPOSAL”** were sent this 4th day of May 1998, by first class United States mail, postage prepaid, to the following:

\*John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 554  
Washington, D.C. 20554

Timothy E. Welch, Esq.  
Hill & Welch  
1330 New Hampshire Ave., N.W.  
Suite 113  
Washington, D.C. 20036

  
Margie Sutton Chew

**\*VIA HAND DELIVERY**